

**AGENDA —July 31, 2002 Business Taxes Committee Meeting**  
***Proposed Alcoholic Beverage Tax Regulatory Changes***

<p><b>Action 1 — Consent Items</b></p> <p>Alcoholic Beverage Tax Regulations 2500, 2538, 2552, 2570 Exhibit 2</p>	<p>Adopt proposed new regulation and amendments as agreed upon by staff and interested parties.</p>
<p><b>Action 2 – Authorization to Publish</b></p>	<p>Recommend the publication of the proposed new regulation and amendments as adopted in the above actions.</p> <p>Operative Date: none Implementation: Upon OAL approval</p>

Issue Paper Number 02-013



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

---

## Proposed Alcoholic Beverage Tax Regulatory Changes

### I. Issue

Should the Board amend three current regulations and adopt one new regulation (Exhibit 2) to clarify the application of the Alcoholic Beverage Tax Law by (1) adding a relief from liability regulation consistent with Sales and Use Tax regulations; (2) amending the current records regulation to be consistent with Sales and Use Tax regulations; and (3) making other changes for clarity and consistency?

### II. Staff Recommendation

Staff recommends that the Board authorize publication of the proposed amendments to the existing Alcoholic Beverage Tax regulations and proposed new regulation. None of the proposed regulatory changes have a cost or revenue impact.

Below is a listing of the regulatory proposals:

Regulation 2500.	Records	Amend
Regulation 2538.	Beer and Wine Importers	Amend
Regulation 2552	Spoiled Beer and Wine Exemption and Credit	Amend
Regulation 2570	Relief from Liability	New

### III. Other Alternative(s) Considered

Do not adopt the proposed new regulation and amendments.

Issue Paper Number 02-013

#### **IV. Background**

The Alcoholic Beverage Tax regulations were first adopted in 1955. The majority of the regulations have not been reviewed or amended since then and only a small number of the regulations have been reviewed or amended since 1990. The attached proposed amendments revise current regulations for clarity and consistency. In addition, a new regulation is proposed to identify the circumstances under which relief from liability will be granted. This proposed new regulation mirrors existing Sales and Use Tax Regulation 1705.

#### **V. Staff Recommendation**

The staff recommends that the Board authorize publication of the attached proposed new regulation and amendments.

##### **A. Description of the Staff Recommendation**

###### **1. Regulation 2500. Records**

This regulation specifies the records to be kept by alcoholic beverage taxpayers. Staff recommends the language of the current regulation be deleted and proposes adding requirements consistent with Sales and Use Tax Regulation 1698. The proposed amendment also correctly updates the title of the regulation from “General” to “Records.”

###### **2. Regulation 2538. Beer and Wine Importers**

This regulation specifies return reporting requirements when taxpayers have two types of licenses. Staff recommends changes in the language for clarity to identify which return is required to be filed and to correct gender specific language.

###### **3. Regulation 2552. Spoiled Beer and Wine Exemption and Credit**

This regulation describes exemptions allowable for spoiled beer and wine. Staff recommends changes in the language to clarify that an exemption is allowable only for tax-paid beer or wine and to create consistency with section 32176 of the Alcoholic Beverage Tax Law.

###### **4. Regulation 2570. Relief from Liability**

This regulation describes the conditions that must be met in order for a person to be relieved of liability for the payment of alcoholic beverage taxes, including penalties and interest added to those taxes. This is a new regulation consistent with Sales and Use Tax Regulation 1705.

Issue Paper Number 02-013

**B. Pros of the Staff Recommendation**

Adopting the proposed new regulation and amendments will bring about administrative conformity between the regulations and current statutes and provide greater clarity for members of the public.

**C. Cons of the Staff Recommendation**

None noted.

**D. Statutory or Regulatory Change**

Adoption of the proposed new regulation and amendments will not require statutory changes. Section 32451 of the Revenue and Taxation Code authorizes the Board to provide the rules and regulations needed to administer and enforce Part 14, Division 2 of the Revenue and Taxation Code.

**E. Administrative Impact**

It is not anticipated that the Board will incur any additional workload as a result of the adoption of the proposed new regulation and amendments.

**F. Fiscal Impact**

**1. Cost Impact**

No additional cost. Workload impact is considered routine and absorbable.

**2. Revenue Impact**

No revenue impact.

**G. Taxpayer/Customer Impact**

Amendment of the proposed regulations will provide clarification to the public concerning the administration of the Alcoholic Beverage Tax Law. In addition, the proposed regulations will describe the record keeping requirements for alcoholic beverage taxpayers and the circumstances under which relief from liability will be granted.

**H. Critical Time Frames**

This issue is not critical, but to prevent the underreporting of tax due to misunderstandings by taxpayers and consumers, adoption of the new regulation and amendments should be addressed as expeditiously as possible.

Issue Paper Number 02-013

**VI. Alternative 1**

**A. Description of the Alternative**

Do not adopt the proposed new regulation and amendments.

**B. Pros of the Alternative**

None

**C. Cons of the Alternative**

Fails to add regulations for records and relief of liability consistent with Sales and Use Tax Law. Additionally, fails to correct language for clarity and consistency in application of Alcoholic Beverage Tax Law.

**D. Statutory or Regulatory Change**

None

**E. Administrative Impact**

None

**F. Fiscal Impact**

None

**1. Cost Impact**

None

**2. Revenue Impact**

None

**G. Taxpayer/Customer Impact**

Taxpayers will not have consistent guidelines for Records and Relief of Liability. Taxpayers will not have clear and concise directions of reporting requirements when more than one license is held and knowing the circumstances under which exemptions are allowable for spoiled beer and wine.

**H. Critical Time Frames**

None

Prepared by: Excise Taxes Division, Special Taxes Department

Current as of: July 10, 2002



---

## PROPOSED ALCOHOLIC BEVERAGE TAX REGULATORY CHANGES

### Recommendation and Alternatives

#### **Staff Recommendation:**

Staff recommends that the Board authorize publication of the proposed amendments to the existing Alcoholic Beverage Tax Law regulations and proposed new regulations. Staff also recommends that the Board authorize the proposed deletions. The amendments to the listed regulations, deletion of an existing regulation, and proposed new regulations are considered to be changes that have no cost and revenue impact. Staff met with interested parties which provided input for the proposed changes to all the regulations.

#### **Alternative 1:**

Do not adopt the proposed new regulations, amendments and deletions.

### Background, Methodology, and Assumptions

#### **Staff Recommendation:**

There is nothing in the proposed changes to the Alcoholic Beverage Tax regulations that would impact revenues.

#### **Alternative 1:**

Alternative 1 has no revenue effect.

### Revenue Summary

The staff recommendation has no revenue effect.

The alternative proposal has no revenue effect.

## **Preparation**

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Mr. Dennis Maciel, Chief, Excise taxes Division. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of June 19, 2002

*Article 1. Records*

Regulation 2500. ~~GENERAL RECORDS~~

~~Every licensee liable for payment of taxes based upon the sale of alcoholic beverages shall keep complete and accurate records of all transactions in alcohol or alcoholic beverages.~~

~~All records shall be kept and maintained at the licensed premises of the taxpayer in this State, unless permission has been granted by the board to keep and maintain the records at some other location.~~

~~Every licensee required to file reports shall retain copies of all such reports and shall maintain adequate records by which employees of the board may verify such reports.~~

~~All records required by law or rule and regulation to be kept by any licensee, shall be kept and preserved for a period of three years.~~

~~Failure to keep and maintain records and copies of reports as prescribed by this subchapter will be considered as evidence of negligence or intent to evade the tax, and will result in the imposition of appropriate penalties.~~

*History:* Effective April 17, 1955

(a) DEFINITIONS.

(1) "Database Management System" – a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic data interchange" or "EDI technology" – the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) "Hardcopy" – any document, record, report, or other data maintained in a paper format.

(4) "Machine sensible record" – a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(5) "Taxpayer" – includes and means any person liable for the payment of tax or reporting requirement specified under the Alcoholic Beverage Tax Law, Part 14, Division 2, Revenue and Taxation Code (Sections 32001-32557).

(b) GENERAL

(1) A taxpayer shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct tax liability under the Alcoholic Beverage Tax Law and all records necessary for the proper completion of the return. Such records include but are not limited to:



(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns.

(2) Machine-sensible records are considered records under Revenue and Taxation Sections 32452 and 32453.

(c) MACHINE SENSIBLE RECORDS.

(1) GENERAL

(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g. Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice data, product description, quantity purchased, and price. Codes may be used to identify some or all of the data elements provided the taxpayer maintains a method which allows the board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example a taxpayer, using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e. they contain only codes for that information), the

taxpayer must also retain other records, such as its vendor master file and product code description lists and make them available to the board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

### (3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS.

The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

### (4) BUSINESS PROCESS INFORMATION

(A) Upon request of the board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

- (1) the functions being performed as they relate to the flow of data through the system;
- (2) the internal controls used to ensure accurate and reliable processing, and;
- (3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

- (1) record formats or layouts;
- (2) field definitions (including meaning of all codes used to represent information);
- (3) file descriptions (e.g. data set name); and
- (4) detailed charts of accounts and account descriptions.

### (d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The board recommends but does not require that taxpayers refer to the National archives and Records Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) ACCESS TO MACHINE-SENSIBLE RECORDS.

(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation between the board and the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard records format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.

(D) The taxpayer and the board may agree on the means of providing access to the machine-sensible records.

(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the board. For example, if a database management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) HARDCOPY RECORDS.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction

are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control or other temporary purpose need not be retained.

(h) ALTERNATIVE STORAGE MEDIA.

(1) For purposes of storage and retention, a taxpayer may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (1).

(C) Upon request by the board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) RECORD RETENTION-TIME PERIOD. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

(j) RECORD RETENTION LIMITATION AGREEMENTS.

(1) The board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superceded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall:

1. document understandings reached with the board, which may include, but are not limited to, any one or more of the following issues:

a. the conversion of files created on an obsolete computer system;

b. restoration of lost or damaged files and the actions to be taken;

c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the board determines are not necessary for retention and which it may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practice shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under section 32453 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) FAILURE TO MAINTAIN RECORDS.

Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

Note: Authority cited: Section 32451, Revenue and Taxation Code.

Reference: Section 32452 and 32453, Revenue and Taxation Code.

Regulation 2538. BEER AND WINE IMPORTERS.

Every licensed beer and wine importer shall, on or before the fifteenth day of each and every month, or on or before the fifteenth day of the month following the close of such other reporting period authorized by the board, file with the board at Sacramento, a tax return on the form prescribed by the board of all sales of beer or wine for the preceding reporting period, together with such other information as is required on such form.

A wine grower holding both a winegrower's license and a beer and wine importer's license shall include ~~his report of~~ the total imports of wine for the reporting period on his ~~"Tax Return of Wine Grower"~~ the "Winegrower's Tax Return" and not on the ~~"Tax Return of Beer and Wine Importer"~~ and ~~a~~.

A beer manufacturer holding both a beer manufacturer's license and a beer and wine importer's license shall include the total ~~his total monthly report of~~ imports of beer on the ~~his "Tax Return of Beer Manufacturer"~~ and not on his ~~"Tax Return of Beer and Wine Importer."~~

Every licensed beer and wine importer shall, on or before the fifteenth day of the month following the close of each reporting period, ~~file with the board at Sacramento the original page, or pages, of BOE SBE Form 269-A, provided that additional entries on these forms, as required by Regulation 2513, have been made since the last reporting date.~~

*Note: Authority cited: Sections 32451, Revenue and Taxation Code.*

*Reference: Sections 32151, 32171, 32173, 32174, 32175, 32176, 32251, 32251.5, 32452, Revenue and Taxation Code.*

Regulation 2552. SPOILED BEER AND WINE EXEMPTION AND CREDIT.

A beer and wine importer will be allowed ~~a tax exemption for spoiled beer or wine not previously subject to tax, or~~ a credit for beer and wine sold and subsequently returned as spoiled, when the spoiled beer or wine is destroyed under the supervision of a representative of the Board. For small quantities of beer or wine destroyed, which are not supervised by a representative of the Board, the exemption or credit is allowed only after prior written approval is obtained from the Board.

To secure prior written approval, the beer and wine importer must submit a written request to the Board, listing the type of beverage, the number of containers, the container sizes and the total gallons destroyed.

After receiving approval from the Board and after destroying the beer or wine, the beer and wine importer must submit declaration signed under penalty of perjury, listing the number of container, the container sizes, the total gallons destroyed and the date and manner of destruction. The declaration must be signed by a person in authority in the importer's organization who witnessed the destruction of the beer or wine.

For the purposes of this regulation, small quantities means 2,500 gallons or less of beer, 2,500 gallons or less of still wine, and 1,500 gallons or less of champagne or sparkling wine by volume.

*Note: Authority cited:* Section 32451, Revenue and Taxation Code.

*Reference:* Sections 32171, 32173, and 32176, Revenue and Taxation Code.



ARTICLE 9 – MISCELLANEOUS.

Regulation 2570. RELIEF FROM LIABILITY.

(a) IN GENERAL. A person may be relieved from the liability for the payment of alcoholic beverage taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of a person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered “written advice from the Board” for purposes of this regulation.

A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

Note: Authority cited: Section 32451, Revenue and Taxation Code.

Reference: Section 32257, Revenue and Taxation Code.